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Robert R. Corbin

April 4, 1987

The Honorable Wayne Stump
Arizona State Senator
State Capitol - Senate Wing
Phoenix, Arizona 85007

Re: I87-047 (R86-180)

Dear Senator Stump:

You have asked four questions pertaining to the state's authority to regulate the activities of the citizens of the State of Arizona, including those who would prefer to be free from government regulation.

We previously declined to answer your request because these questions had been raised in Cause No. CIV 86-1937 PHX CAM in which your opinion request has been marked as an exhibit. That case was recently summarily dismissed on the basis that the claims had "no legal foundation" and the complaint was "completely without merit." Order dated January 22, 1987 at 3-4.

You have asked us to reconsider our decision to decline to answer your request for an opinion regarding the power of the Legislature to regulate the activities of all citizens of the State of Arizona. Because Cause No. CIV 86-1937 PHX CAM has been dismissed, we can now respond to your opinion request.

Specifically you have posed the following questions:

1) Can unenfranchised individuals who constitute the sovereignty of the State, with unalienable rights, be compelled into a diminution or forfeiture of those rights by administrative regulation or legislative enactments? If so, please be specific as to the basis of this legislative power.

2) Administrative regulation is to control and conduct the operation of

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government agencies and those enfranchised to government. What would be a proper wording, in administrative regulation, to set forth in clear unambiguous language, to encompass all who are subject to regulation but to exclude those who are of the unenfranchised sovereignty?

3) Article II, Section 26, of the Constitution of the State of Arizona provides: ". . . but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain, or employ an armed body of men." Does not this provision prohibit corporations, such as municipalities, and individuals, such as the governor, from employing, organizing, or maintaining their armed forces; such as the Highway Patrol and city police forces. If this constitutional prohibition has been superseded or contravened, please provide me with specific authorities.

4) Can one of We, the People, of our constitutional preamble, who constitute the sovereignty of the State, be punished for violation of a statute in conflict with a right reserved from legislative impairment by declaration in the document which created that legislature?

Your questions are based on the erroneous assumption that two distinct classes of individuals exist. Neither the state nor federal constitutions exempt, nor authorize individuals or groups of individuals to exempt themselves, from their respective provisions.

The "privileges or immunities" clause of the Fourteenth Amendment provides that,

No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States.

U.S. Const. amend. XIV, § 1. This applies only to those uniquely federal rights, such as the right to interstate travel or commerce, and not the Bill of Rights. Slaughter-House cases, 83 U.S. (16 Wall) 36, 21 L.Ed 394 (1873).

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The answer to your third question, concerning whether the Arizona Constitution prohibits the governor and political subdivisions from maintaining police forces, is no. Section 26 of the Declaration of Rights provides:

The right of the individual citizen to bear arms in defense of himself or the State shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain, or employ an armed body of men.

Ariz. Const., art. II, § 26 (emphasis added). Thus, the prohibition applies to the raising of private armies, not government armies.

As for the governor's authority to maintain a police force, the governor is "commander-in-chief" of the state's military forces. Ariz. Const., art. V, § 3. Additionally, the governor shall have such duties as may be prescribed by law. Ariz. Const., art. V, § 9. One of these duties is to establish the Department of Public Safety. A.R.S. § 41-1711 to -1714. As for political subdivisions, Ariz. Const., art XIII, § 1 directs the state legislature to pass laws governing the incorporation and organization of cities and towns. A.R.S. § 9-240(B)(12) authorizes cities and towns to establish and regulate police forces.

Lastly, you ask whether persons who constitute the "sovereignty of the state" may be punished for violating a statute which conflicts with a right reserved from legislative impairment by the United States Constitution. We reiterate that no individual citizen is a "sovereign;" all citizens are subject to lawfully enacted state and federal laws.

Sincerely,



BOB CORBIN
Attorney General

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